



June 5, 2001

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2001-2318

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147975.

The City of Garland Police Department (the "department") received a request for eleven categories of information concerning the requestor's client including:

- (1) A copy of any dispatch records or reports generated from the initial incident and the subsequent arrest records[;]
- (2) [c]opies of all photographs taken of the incident, reproduced from negatives[;]
- (3) [a] copy of any investigative videotape pertaining to this incident[;]
- (4) [t]he names and present duty assignment of each officer who assisted in the investigation and/ or arrest of the subject above[;]
- (5) [t]he names, addresses and phone numbers of all know witnesses[;]
- (6) [a] copy of any witness statement(s), written or recorded, taken by the investigating officers[;]

- (7) [c]opies of any field notes, file notes, and other pertinent scene data[;]
- (8) [m]edical and duty records for officers Collins and A.D. Davis since 3/05/01[;]
- (9) [a]ny internal memos sent to, or created by officers Collins, A.D. Davis, K.R. Davis or Investigator Murfee regarding the incident[;]
- (10) [a]ny disciplinary memos sent to the above mentioned officers by their supervisors[; and]
- (11) [a]ny past disciplinary documents for officers Collins and A.D. Davis regarding excessive use of force or violations of civil rights.

You inform us that the department has released the applicable arrest reports, incident/investigation reports, prosecution reports, arrest warrants and accompanying affidavits, and disciplinary information on certain police officers. However, you claim that the submitted internal affairs investigation relating to officers G.W. Collins and A. Davis is excepted from disclosure under section 552.101 of the Government Code by virtue of section 143.089(g) of the Local Government Code, and that the request may be broad enough to include information contained in the pending internal affairs investigation file. As you have not submitted for our review any information other than the internal affairs report, nor indicated that you wish to withhold that information, we assume you have released the remainder of the requested information to the requestor. If you have not released this information, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302. We have considered the exception you claim and reviewed the submitted information.

We initially note that the department failed to comply with section 552.301 of the Government Code in requesting this decision. Subsections 552.301(a) and (b) provide:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.
- (b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code § 552.301(a), (b). You state that the department received the request for information on March 16, 2001. You did not request a decision from this office until

March 31, 2001. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(b) of the Government Code. Because the request for a decision was not timely submitted, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). You believe that the submitted information may be confidential under section 143.089(g) of the Local Government Code. This office has held that a compelling reason exists to withhold information when the information is deemed to be confidential by another source of law or implicates the privacy interest of a third party. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Accordingly, we will consider the department's argument for withholding the information at issue.

Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 143.089 of the Local Government Code contemplates two different types of personnel files: one that the police department is required to maintain as part of the officer's civil service file, and one that the police department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g).

Section 143.089(g) provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App. — Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the city police department for its use and addressed the applicability of section 143.089(g) to that file. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *City of San Antonio*, 851 S.W.2d at 949; *see also City of San Antonio v. San Antonio Express-News*, No.04-99-00848-CV, 2000 WL 1918877 (Tex. App. -- San Antonio, Dec. 20, 2000, no pet. h.) (information reasonably relating to officer's employment relationship with

department and maintained in the department's internal file pursuant to section 143.089(g) is confidential). In cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place records relating to that investigation and disciplinary action in the personnel files maintained under section 143.089(a). Such records contained in the (a) file are not confidential under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 2 (1990).¹

You explain that the internal affairs files are maintained by the department as part of each officer's departmental personnel file maintained for departmental use. You further state that "due to the pendency of the investigation, no misconduct has been found on the part of the officers investigated; the complaint has not been sustained; and the investigation has resulted in no disciplinary action." Having reviewed the information, we conclude the submitted internal affairs report is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.

However, we note that most of the records in the internal departmental file are records governed by the Medical Practice Act (the "MPA").² Section 159.002 of the MPA provides:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). The medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the

¹ Ordinarily, information maintained in a police officer's civil service personnel file must be released to the public upon request, unless some other provision of chapter 552 of the Government Code permits the civil service to withhold the information. Local Gov't Code § 143.089(f); Gov't Code §§ 552.006, .021; Open Records Decision No. 562 at 6 (1990) (construction of Local Gov't Code § 143.089(f) provision requiring release of information as required by law).

² Under the rules of statutory construction, a specific statute prevails over a more general statute. Gov't Code § 311.026, *City of Dallas v. Mitchell*, 870 S.W.2d. 21 (Tex. 1994).

governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Here, the requestor is an attorney representing the person whose medical records are at issue. The MPA permits disclosure of MPA records to the patient, a person authorized to act on the patient's behalf, or a person who has the written consent of the patient. Occ. Code §§ 159.003, .004, .005. Thus, the department may release the MPA records only in accordance with the MPA. Open Records Decision No. 598 (1991).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

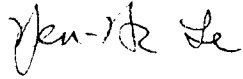
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely, .

A handwritten signature in cursive script, appearing to read "Yen-Ha Le".

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DBF/seg

Ref: ID# 147975

Encl. Submitted documents

cc: Mr. Mark R. Robinius
620 Main Street
Garland, Texas 75040
(w/o enclosures)